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No. 12.

# ANNUAL REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE

YEAR 1882.

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BOSTON :  
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,  
18 POST OFFICE SQUARE.  
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## Commonwealth of Massachusetts.

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ATTORNEY-GENERAL'S OFFICE,  
BOSTON, Jan. 17, 1883.

To the Hon. GEORGE A. MARDEN,  
*Speaker of the House of Representatives.*

Sir : — I have the honor to transmit to you, herewith, my official report for the year ending this day, and which closes my term of service.

I am, very respectfully,  
Your obedient servant,

GEO. MARSTON.





# Commonwealth of Massachusetts.

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ATTORNEY-GENERAL'S OFFICE, Jan. 17, 1883.

*To the Honorable the Speaker of the House of Representatives :*

I have the honor to submit to the legislature my official report of the work of this department for the year ending this day.

The whole number of cases in the courts which have required and received my personal attention or supervision is 219 ; and they are thus classified :—

Indictments for murder, . . . . .	20
Exceptions and reports in criminal cases, . . . . .	73
Informations upon relation of public officers, . . . . .	92
Informations upon relation of private persons, . . . . .	10
Miscellaneous, . . . . .	24
Total, . . . . .	219

I have attended to the conduct and disposition of the following cases in the Supreme Judicial Court in which the defendants were charged with the crime of murder.

## IN THE COUNTY OF HAMPDEN.

An indictment against Dwight Kidder for the murder of Charles D. Kidder, by shooting. Upon his arraignment he pleaded not guilty, and Messrs. Nehemiah A. Leonard and George Leonard were assigned as his counsel. Subsequently George Leonard was excused from serving as counsel, at his own request, and Henry C. Bliss was assigned in his stead. A trial was commenced before Justices Lord and Charles Allen, April 24, and terminated April 27, in a verdict of guilty of manslaughter, and the defendant was thereupon

sentenced to imprisonment in the State Prison for twenty years.

An indictment against Turpin Jenks for the murder of John Otis, by beating and wounding by blows. Upon his arraignment he pleaded not guilty, and Messrs. E. B. Maynard and Willmore B. Stone were assigned as his counsel. His trial was commenced April 27, before Justices Lord and Charles Allen, and terminated April 29, in a verdict of guilty of manslaughter. He was thereupon sentenced to imprisonment in the State Prison for six years.

An indictment against Joseph B. Loomis for the murder of David Leavitt, by shooting. Upon his arraignment he pleaded not guilty, and Messrs. Henry W. Ely and J. R. Dunbar were assigned as his counsel. Subsequently Mr. Dunbar retired, and James B. Carroll was assigned in his stead. His trial commenced December 5, before the Chief Justice and Justice Charles Allen, and terminated December 8, in a verdict of guilty of murder in the first degree. He was thereupon sentenced to be executed on March 8, 1883.

#### IN THE COUNTY OF NORFOLK.

An indictment against James Gately for the murder of his wife, Mary Gately, by blows. Upon his arraignment he pleaded not guilty, and Messrs. C. A. Mackintosh and A. Eliot were assigned as his counsel. His trial was had May 16, before Justices Devens and C. Allen, and resulted in a verdict of not guilty by reason of insanity, and he was ordered to be committed to the State Lunatic Hospital at Worcester during his natural life.

An indictment against James McKenney, for the murder of William McComish, by blows. Upon his arraignment he pleaded not guilty, and Messrs. William B. Gale and John L. Eldridge were assigned as his counsel. Mr. Gale declined to act, and was excused by the court, and J. J. Malone was assigned as junior counsel. The trial commenced before Justices Devens and C. Allen, May 17, and terminated May 20, in a verdict of guilty of murder in the second degree, and the prisoner was sentenced to imprisonment in the State Prison for life.

## IN THE COUNTY OF BRISTOL.

An indictment against Faragino Charon, *alias* Frank Charon, for the murder of his wife, Exilda Charon, by shooting. Upon his arraignment he had pleaded not guilty; but at the time fixed for his trial before the Chief Justice and Justice Devens, April 18, he desired to retract that plea, and plead anew, to which I assented; and he thereupon pleaded guilty of murder in the second degree, which plea I accepted, and he was sentenced to imprisonment in the State Prison for life. His rights were carefully protected by H. A. Dubuque, his counsel.

An indictment against Thomas H. McMullen for the murder of his wife, Anna B. McMullen, by beating. On his arraignment he had pleaded not guilty, and Messrs. Nicholas Hatheway and John W. Cummings were assigned as his counsel. His trial commenced before the Chief Justice and Justice Devens, April 18, and terminated, April 21, in a verdict of guilty of murder in the second degree; and he was sentenced to imprisonment in the State Prison for life.

## IN THE COUNTY OF SUFFOLK.

An indictment against John Daley for the murder of his wife, Ellen Daley, by stabbing. On his arraignment he had pleaded not guilty, and Messrs. Albert E. Pillsbury and Matthew Dolan were assigned as his counsel. At the time fixed for his trial he desired to retract his plea, to which I consented, and he then pleaded guilty of manslaughter, which plea I accepted, and he was thereupon sentenced to imprisonment in the State Prison for twenty years.

An indictment against Frank C. Pease for the murder of his wife, Ellen Pease, by shooting. Upon his arraignment he had pleaded not guilty, and Messrs. Henry E. Fales and Stephen H. Tyng were assigned as his counsel. His trial commenced April 10, before the Chief Justice and Justice W. Allen, and terminated April 13, in a verdict of guilty of murder in the second degree, and he was thereupon sentenced to imprisonment in the State Prison for life.

## IN THE COUNTY OF WORCESTER.

An indictment against George H. Richardson for the murder of Solomon Richardson, by shooting. Upon his arraignment, he pleaded not guilty, and Messrs. George F. Verry and F. A. Gaskill were assigned as his counsel. His trial commenced December 11, before Justices Field and Devens, and terminated, December 13, in a verdict of guilty of murder in the second degree. A motion to set aside the verdict was argued and overruled, and Richardson was thereupon sentenced to imprisonment in the State Prison for life.

An indictment against Joseph St. John for the murder of Dolor J. Varney, by shooting. Upon his arraignment, he pleaded not guilty, and Messrs. John Hopkins and Charles F. Aldrich were assigned as his counsel. His trial commenced before Justices Field and Devens, December 14, and terminated, December 18, in a verdict of guilty of murder in the second degree. A motion to set aside the verdict was argued and overruled, and St. John was thereupon sentenced to imprisonment in the State Prison for life.

In all these cases I had the efficient assistance of the district attorneys in the respective districts.

There are now pending, awaiting trial, two indictments, in which the defendants are charged with murder; one against Walter Edwin Curtis, for the murder of Charles Eugene Biglow, in the county of Franklin; and one against Michael O'Neil, for the murder of Hannah O'Neil, in the county of Suffolk.

I am impelled by a sense of duty to repeat the following recommendations from my last annual report:—

“I have heretofore called the attention of the legislature to the lack of uniformity in the taxation of costs in criminal cases. I desire to repeat the suggestions which I have formerly made in that behalf.

“The advancement of science makes necessary and available, and more frequent, the use of the testimony of experts in the courts; and, in the trial of capital cases, the resort to witnesses of this kind, both for prosecution and defence, is unavoidable. The increased compensation paid to such men in affairs of business at the present time, above what was formerly deemed sufficient, has of course raised the standard of expectation in respect to payment as witnesses. There is now no rule of law to govern the employment of such men upon the trial of capital cases, and it rests solely in the discretion of the Attorney-General. The

question of compensation is also practically left to that officer, though there is the opportunity of reference to the court in the nature of appeal. In my opinion, this subject may be regulated by statute in a way to promote the public interest, and to secure uniformity of administration."

In addition to the service demanded in the courts, upon cases actually depending, other important work has been required of me in advising the different departments of the government, and still more in resisting, before committees of the legislature, claims which have been made against the Commonwealth.

The suit against the Boston & Albany Railroad Company to recover the amount due for flats at South Boston, and the proceeding in equity concerning the same, have been brought to a close under the authority of the Resolve of 1881, chap. 58. The terms of the settlement appear in the agreement hereto annexed, to which I respectfully refer, and which were approved by the Harbor and Land Commissioners, and the Governor and Council. The adjustment of this controversy has required much time and patience on the part of the Harbor and Land Commissioners, to whom great credit is due for their labors in this behalf.

The questions involved in the proceeding for the protection of Green Harbor River have been argued and re-argued in the Supreme Judicial Court; but no decision has been announced.

The petition of David Pulsifer, claiming to recover \$5,207.32 for work done in connection with the publication of ancient records, was tried before Chief Justice Brigham and Justices Colburn and Knowlton of the Superior Court, and resulted in a verdict in favor of the Commonwealth.

The petition of Charles P. Brooks, claiming to recover \$3,078.23, with interest, for labor and materials in alterations at the State House in 1867, was disposed of by an entry of *neither party*.

Provision is made by Public Statutes, chap. 17, sect. 10, for the appropriation of \$300 annually for costs in civil actions. The costs of such actions during the past year have been \$576.05, so that the appropriation was insufficient by the sum of \$276.05. But costs were collected in civil

cases during the year to the amount of \$596.94, and the costs collected may usually be expected to approximate in amount the necessary expenditure for such costs; and it would be wise to have the costs collected paid over to the treasurer at frequent intervals, and added to the annual appropriation of \$300, and made available for the payment of costs in civil actions as they may arise. There is now in the hands of the Assistant Attorney-General the sum of \$792.86, which is for the most part the accumulation of costs received by this office during a number of years, which is this day paid over to the treasurer; and a new method of accounting should be adopted, which will simplify the management of the receipts and expenditures in this matter.

I have appended to this report a statement in reference to the cases of certain persons heretofore indicted for murder, and committed to the State lunatic hospitals as insane.

The number of applications for requisitions upon the governors of other States for the extradition and return of fugitives from the justice of this State, during the year, is 28, of which 26 were granted.

The number of requisitions from the governors of other States upon the Governor of this Commonwealth has been 17, of which 11 were complied with.

The expense incurred by the Commonwealth for the extradition and return of fugitives from justice during the year ending Dec. 31, 1882, has been \$549.50.

There has been collected, through this office, the sum of \$4,835.18 upon claims due the Commonwealth, of which \$4,781.47 has been paid over to the Treasurer and Receiver-General, and \$53.71 to the Treasurer of the Lunatic Hospital at Danvers. To this may properly be added the \$100,000 recovered in the settlement with the Boston & Albany Railroad Company.

The exceptions pending in the case of Edward Ryan, heretofore convicted of murder in the first degree, have been argued, but have not yet been disposed of by the court.

In the case of William F. Graham *et al. v.* The Boston, Hartford & Erie Railroad Company, and others, in which the Treasurer and Receiver-General was made a party defendant because of his custody of certain bonds, pending in the



Circuit Court of the United States for the District of Massachusetts, an opinion has just been filed sustaining the demurrer of the defendants on the grounds of *laches* and want of equity.

Further details of the work of this department appear in the subjoined tables.

Charles H. Barrows, Esq., has continued to fill the office of Assistant Attorney-General to this time with commendable fidelity and conspicuous ability.

GEORGE MARSTON,

*Attorney-General.*

## TABLE

*Showing the Number of Criminal Cases pending on Questions of Law in the Supreme Judicial Court during the Year ending Jan. 17, 1883, and the Disposition thereof by Counties.*

COUNTIES.	Cases pending.	Decided for the Commonwealth.	Decided against the Commonwealth.	Argued, but not yet decided.	Not yet argued.
Barnstable, . . . . .	2	2	-	-	-
Bristol, . . . . .	6	5	-	1	-
Dukes, . . . . .	2	-	-	2	-
Essex, . . . . .	6	6	-	-	-
Franklin, . . . . .	1	1	-	-	-
Hampden, . . . . .	5	5	-	-	-
Hampshire, . . . . .	4	3	-	1	-
Middlesex, . . . . .	13	9	2	1	1
Norfolk, . . . . .	3	5	-	1	-
Plymouth, . . . . .	6	2	-	1	-
Suffolk, . . . . .	21	12	2	3	4
Worcester, . . . . .	4	1	2	1	-
Totals, . . . . .	73	51	6	11	5



## TABLE

*Showing the Number and Character of Criminal Cases pending on Questions of Law in the Supreme Judicial Court during the Year ending Jan. 17, 1883, and the Disposition thereof.*

OFFENCES.	Cases pending.	Decided for the Commonwealth.	Decided against the Commonwealth.	Argued, but not yet decided.	Not yet argued.
Abortion, . . . . .	2	1	—	1	—
Attempt to extort money, . . . . .	1	—	—	—	1
Arson, . . . . .	1	—	—	—	1
Assault, . . . . .	4	4	—	—	—
Burning a building in the night time,	1	—	—	1	—
Burning a building to defraud an insurance company, . . . . .	1	1	—	—	—
Burning a haystack, . . . . .	1	1	—	—	—
Concealing leased property, . . . . .	1	—	1	—	—
Conspiracy, . . . . .	4	2	1	1	—
Disorderly house, . . . . .	3	2	—	—	1
Drunkenness, . . . . .	2	2	—	—	—
Embezzlement, . . . . .	1	—	1	—	—
False pretences, . . . . .	1	1	—	—	—
Forgery, . . . . .	1	—	—	—	1
Jail breach, . . . . .	1	1	—	—	—
Keeping an unlicensed dog, . . . . .	1	—	—	1	—
Larceny, . . . . .	5	4	—	1	—
Liquor nuisance, . . . . .	13	11	—	2	—
Liquor, keeping with intent to sell, . . . . .	5	3	—	1	—
Liquor, illegal sale of, . . . . .	6	5	1	—	—
Liquor, illegal transportation of, . . . . .	1	1	—	—	—
Liquor seizure, . . . . .	1	—	—	1	—
Maintaining a building for sale of refreshments within one mile of a camp-meeting, . . . . .	1	1	—	—	—
Maintaining an unlicensed pool table, . . . . .	1	1	—	—	—
Manslaughter, . . . . .	1	—	1	—	—
Mayhem, . . . . .	1	1	—	—	—
Murder, . . . . .	1	—	—	1	—
Obstructing a highway, . . . . .	1	—	1	—	—
Obtaining property by trick at cards, . . . . .	1	—	—	—	1
Perjury, . . . . .	1	1	—	—	—
Violation of a municipal ordinance, . . . . .	2	1	—	1	—
Violation of the screen law, . . . . .	6	6	—	—	—
Totals, . . . . .	73	51	6	11	5

## CASES

*Argued by the Attorney-General, or requiring his Special Supervision, during the Year ending Jan. 17, 1883.*

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## COUNTY OF BARNSTABLE.

Commonwealth *v.* Charles F. Freeman. S. J. C. *Murder.* Defendant still in Lunatic Hospital at Danvers.

Commonwealth *v.* Mary Roberts. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Reuben L. Bearse. S. J. C. *Maintaining a building for vending refreshments within one mile of a camp-meeting.* Exceptions S. C. Exceptions overruled.

## COUNTY OF BRISTOL.

Commonwealth *v.* Thomas H. McMullen. S. J. C. *Murder.* Defendant convicted of murder in the second degree, and sentenced.

Commonwealth *v.* Faragino Charon, *alias* Frank Charon. S. J. C. *Murder.* Defendant pleaded guilty of murder in the second degree, and was sentenced.

Commonwealth *v.* John P. Brennan. S. J. C. *Larceny.* Exceptions S. C. Exceptions waived.

Commonwealth *v.* Margaret Sheldon. S. J. C. *Burning a haystack.* Exceptions S. C. Exceptions overruled on default.

Commonwealth *v.* John F. Nichols and Almon Ingalls. S. J. C. *Conspiracy.* Exceptions S. C. Argued, but not decided.

Commonwealth *v.* John Blaney. S. J. C. *Mayhem.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Peter Hughes. S. J. C. *Drunkenness.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Ellen Callahan. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions waived.

## COUNTY OF DUKES COUNTY.

Commonwealth v. William J. Mosher. S. J. C. *Liquor nuisance*. Exceptions S. C. Argued, but not decided.

Commonwealth v. Certain Intoxicating Liquors; William J. Mosher, claimant. S. J. C. Exceptions S. C. Argued, but not decided.

## COUNTY OF ESSEX.

Commonwealth v. William Russell. S. J. C. *Murder*.

Commonwealth v. Caroline Cavanaugh. S. J. C. *Liquor nuisance*. Exceptions S. C. Exceptions overruled.

Commonwealth v. William J. Hefferman. S. J. C. *Assault*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Charles S. Parker. S. J. C. *Liquor nuisance*. Exceptions S. C. Exceptions overruled.

Commonwealth v. D. J. Lucy. S. J. C. *Liquor nuisance*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Charles Conner. S. J. C. *Violation of a municipal ordinance*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Edward Flaherty. S. J. C. *Keeping liquor with intent to sell*. Exceptions S. C. Exceptions waived.

## COUNTY OF FRANKLIN.

Commonwealth v. Rice E. Soper. S. J. C. *Perjury*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Walter Curtis. *Murder*. Not yet tried.

## COUNTY OF HAMPDEN.

Commonwealth v. John Kemmler. S. J. C. *Murder*. Defendant still in Worcester Hospital.

Commonwealth v. Dwight Kidder. S. J. C. *Murder*. Defendant convicted of manslaughter, and sentenced to the State Prison for twenty years.

Commonwealth v. Turpin Jenks. S. J. C. *Murder*. Defendant convicted of manslaughter, and sentenced to State Prison for six years.

Commonwealth v. Joseph B. Loomis. S. J. C. *Murder*. Defendant convicted, and sentenced to be hung.

Commonwealth v. Alfred R. Barker. *Jail breach*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Napoleon Auberton. S. J. C. *Violation of screen law*. Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Edward Donahue. S. J. C. *Violation of screen law.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* James Graney. S. J. C. *Larceny.* Exceptions S. C. Exceptions waived.

Commonwealth *v.* Montraville Ackert. S. J. C. *Burning a building to defraud an insurance company.* Exceptions S. C. Exceptions overruled.

#### COUNTY OF HAMPSHIRE.

Commonwealth *v.* Benjamin Eastman. S. J. C. *Murder.* Defendant still in Worcester Hospital.

Commonwealth *v.* Francis A. Beals. S. J. C. *Assault.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Susan E. Hopkins. S. J. C. *Disorderly house.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Owen F. McMahon. S. J. C. *Keeping liquor with intent to sell.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Orville M. Brailey. S. J. C. *Burning a building in the night time.* Exceptions S. C. Argued, but not decided.

#### COUNTY OF MIDDLESEX.

Commonwealth *v.* Joseph Sullivan. S. J. C. *Murder.* Defendant still in Taunton Lunatic Hospital.

Commonwealth *v.* Mortimer Johnson and Sarah A. Johnson. S. J. C. *Murder.* Defendant, Mortimer Johnson, escaped from prison, and is still at large. Sarah A. Johnson released on her own recognizance.

Commonwealth *v.* Nathan P. Pratt. S. J. C. *Embezzlement.* Exceptions S. C. Exceptions sustained.

Commonwealth *v.* Joseph B. Andrews. S. J. C. *Conspiracy.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* William B. Washburn. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions waived.

Commonwealth *v.* William O'Hearn. S. J. C. *Illegal sale of intoxicating liquor.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* James F. Stratton. S. J. C. *Illegal transportation of liquor.* Exceptions S. C. Exceptions waived.

Commonwealth *v.* Ann Gormley. S. J. C. *Illegal sale of liquor.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Warren K. Snow. S. J. C. *Illegal keeping of liquor with intent to sell.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Peter Barnacle. S. J. C. *Manslaughter.* Exceptions S. C. Exceptions sustained.

Commonwealth *v.* Thomas Slamin. S. J. C. *Liquor nuisance.*  
Exceptions S. C. Defendant defaulted.

Commonwealth *v.* Owen Rafferty. S. J. C. *Liquor nuisance.*  
Exceptions S. C. Exceptions overruled.

Antonio Joan *v.* Commonwealth. S. J. C. *Writ of Error.*  
*Arson.* Not yet heard.

Commonwealth *v.* Elizabeth S. Fenno. S. J. C. *Abortion.*  
Exceptions S. C. Argued, but not decided.

Commonwealth *v.* William H. Morse. S. J. C. *Liquor nuisance.*  
Exceptions S. C. Exceptions waived.

#### COUNTY OF NORFOLK.

Commonwealth *v.* Dennis Carney. S. J. C. *Murder.* Defendant still in Stoughton Almshouse.

Commonwealth *v.* David Scannel. S. J. C. *Murder.* Defendant still in Taunton Hospital.

Commonwealth *v.* James Gately. S. J. C. *Murder.* Acquitted by reason of insanity, and committed to Worcester Lunatic Hospital.

Commonwealth *v.* James McKenney, *alias* James Makenney. S. J. C. *Murder.* Convicted of murder in the second degree, and sentenced.

Commonwealth *v.* Evan Jones. S. J. C. *Violation of the screen law.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Edward J. Costello. S. J. C. *Violation of the screen law.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* John Daily. S. J. C. *Liquor nuisance.* Exceptions S. C. Argued, but not decided.

Commonwealth *v.* Ellen Curran. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions waived.

Commonwealth *v.* John Mahoney. S. J. C. *Illegal sale of liquor.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Emory W. Shaw. S. J. C. *Assault.* Exceptions S. C. Exceptions overruled.

#### COUNTY OF PLYMOUTH.

Commonwealth *v.* Edward Moran. S. J. C. *Drunkenness.* Exceptions S. C. Exceptions waived.

Commonwealth *v.* Thomas F. Donohoe. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Ann Morrison. S. J. C. *Keeping liquor with intent to sell.* Exceptions S. C. Argued, but not decided.

## COUNTY OF SUFFOLK.

Commonwealth v. Thomas Brennan. S. J. C. *Murder*. Defendant escaped from Taunton Lunatic Hospital, April 30, 1880.

Commonwealth v. Frank C. Pease. S. J. C. *Murder*. Convicted of murder in the second degree, and sentenced.

Commonwealth v. John Daly. S. J. C. *Murder*. Plea of murder in second degree accepted, and defendant sentenced.

Commonwealth v. Michael O'Neil. S. J. C. *Murder*. Not yet tried.

Commonwealth v. Louis K. Palmer. S. J. C. *Keeping an unlicensed dog*. Exceptions S. C. Argued, but not decided.

Commonwealth v. John J. Doyle. S. J. C. *Keeping liquor with intent to sell*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Sarah E. Howe. S. J. C. *False pretences*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Henry Taylor. S. J. C. *Abortion*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Gardner A. Fuller and E. Frank Mosher. S. J. C. *Conspiracy*. Exceptions S. C. Exceptions overruled.

Commonwealth v. William S. Woods and E. Frank Gillis. S. J. C. *Larceny*. Exceptions S. C. Defendants defaulted.

George W. Meserve v. Commonwealth. S. J. C. *Forgery*. *In error*. Not yet heard.

Commonwealth v. Catherine Rourke. S. J. C. *Larceny*. Exceptions S. C. Exceptions waived.

Commonwealth v. John F. Keating. S. J. C. *Assault*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Joseph D. Thyng. S. J. C. *Concealing leased property*. Exceptions S. C. Exceptions sustained.

Commonwealth v. Rebecca Collier. S. J. C. Exceptions S. C. *Illegal sale of liquor*. Exceptions sustained.

James Fitzgerald, *in error*, v. Commonwealth. S. J. C. *Attempt to extort money*. Not yet heard.

Commonwealth v. Joseph P. Whelan. S. J. C. *Illegal sale of liquor*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Annie Stearns. S. J. C. *Disorderly house*. Exceptions S. C. Not yet argued.

Commonwealth v. Edward Bacon. S. J. C. *Attempt to extort money*. Exceptions S. C. Not yet argued.

Commonwealth v. John Casey. S. J. C. *Violation of the screen law*. Exceptions S. C. Exceptions overruled.

Commonwealth v. Bartholemew O'Brien. S. J. C. *Illegal sale of liquor*. Exceptions S. C. Exceptions overruled.



Commonwealth *v.* Patrick Gibbons. S. J. C. *Violation of the screen law.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* James J. Nott. S. J. C. *Larceny.* Exceptions S. C. Argued, but not decided.

Commonwealth *v.* James O. Young. S. J. C. *Violation of municipal ordinance.* Exceptions S. C. Argued, but not decided.

Commonwealth *v.* Lillie Ismahl. S. J. C. *Disorderly house.* Exceptions S. C. Exceptions overruled.

Commonwealth, by Board of Commissioners of Savings Banks, *v.* Emigrant Savings Bank. S. J. C. *Petition for injunction and winding up of affairs.* Injunction in force.

Commonwealth, by Board of Commissioners of Savings Banks, *v.* North Bridgewater Savings Bank. Same *v.* Mechanics Savings Bank. Same *v.* Sandwich Savings Bank. Same *v.* Barnstable Savings Bank. Same *v.* West Boston Savings Bank. Same *v.* Mercantile Savings Institution. Same *v.* Rockport Savings Bank. Same *v.* Lexington Savings Bank. Same *v.* Needham Savings Bank. Same *v.* Reading Savings Bank. Same *v.* Scituate Savings Bank. S. J. C. *Petitions for injunctions and winding up of affairs.* Affairs in the hands of receivers.

Commonwealth, by Board of Commissioners of Savings Banks, *v.* Hyannis Savings Bank. S. J. C. *Petition for injunction and winding up of affairs.* Affairs wound up and receivers discharged.

Commonwealth, by Board of Commissioners of Savings Banks, *v.* Foxborough Savings Bank. S. J. C. *Petition for an injunction.* Injunction dissolved and business resumed.

Commonwealth, by Insurance Commissioner, *v.* New England Marine Insurance Company. Same *v.* Conway Mutual Fire Insurance Company. S. J. C. *Petitions for injunctions and winding up of affairs.* Affairs in hands of receivers.

Commonwealth, by Insurance Commissioner, *v.* Alliance Insurance Company. S. J. C. *Petition for injunction and winding up of affairs.* Information dismissed.

Commonwealth, by Deputy Insurance Commissioner, *v.* Exchange Insurance Company. Same *v.* Boston Insurance Company. Same *v.* Manufacturers' Insurance Company. Same *v.* Howard Fire Insurance Company. Same *v.* Shoe and Leather Dealers' Insurance Company. Same *v.* Franklin Insurance Company. Same *v.* Washington Insurance Company. Same *v.* Neptune Insurance Company. S. J. C. *Petitions for injunctions and winding up of affairs.* Affairs in the hands of receivers.

Commonwealth, by Deputy Insurance Commissioner, *v.* National Insurance Company. Same *v.* Suffolk Fire Insurance Company. Same *v.* Merchants' Insurance Company. Same *v.* People's Fire

Insurance Company. S. J. C. *Petitions for injunctions and winding up of affairs.* Affairs wound up and receivers discharged.

Attorney-General, *ex rel.* Treasurer, *v.* South Pewabic Copper Company. Same *v.* Winthrop Manufacturing Company. Same *v.* United States Manufacturing Company. Same *v.* Canadian Stop Motion Company. Same *v.* American Furniture Company. Same *v.* Springfield and Newburyport Co-operative Mining Company. Same *v.* United States Electric Light Company. Same *v.* Peet Moulding Machine Company. Same *v.* Drake Gas-Light Company. Same *v.* Estes Plough Company. Same *v.* American Consolidated Fire-Extinguisher Company. S. J. C. *Informations for taxes.* Perpetual injunctions issued.

Attorney-General, *ex rel.* Treasurer, *v.* American Street Light Reflector Company. S. J. C. *Information for taxes.* Interlocutory injunction issued.

Attorney-General, *ex rel.* Treasurer, *v.* Marginal Freight Railroad Company. S. J. C. *Information for taxes.* Information dismissed.

Attorney-General, *ex rel.* Treasurer, *v.* New England Scale Board Box Company. S. J. C. *Information for taxes.* Not yet heard.

Attorney-General, *ex rel.* Commissioner of Corporations *v.* Black River Mining Company. Same *v.* Haverhill Lime Company. Same *v.* Revere Brick Company. S. J. C. *Informations for not making returns.* Perpetual injunctions issued.

Attorney-General, *ex rel.* Treasurer *v.* Cambridge Brick Company. Same *v.* Goodyear Rubber Company. Same *v.* Black River Mining Company. Same *v.* Haverhill Lime Company. Same *v.* American Railway Frog Company. Same *v.* Ashburnham Reservoir. Same *v.* Farmers' and Mechanics' Co-operative Association. S. J. C. *Informations for not making returns.* Perpetual injunctions issued.

Attorney-General, *ex rel.* Treasurer *v.* American Machine Company. S. J. C. *Information for not making returns.* Not yet heard.

Commonwealth, by Tax Commissioner, *v.* Superior Mining Company. Same *v.* Plymouth Gold Mining Company. Same *v.* Silver Ledge Mining Company. Same *v.* Incas Mining Company. Same *v.* Malachite Mining Company. S. J. C. *Informations for not making returns.* Perpetual injunctions issued.

Commonwealth, by Tax Commissioner, *v.* Rockland Mining Company. S. J. C. *Information for not making returns.* Interlocutory injunction issued.

Commonwealth, by Tax Commissioner, *v.* Harris Gold Mining



Company. S. J. C. *Information for not making returns.* Information dismissed.

Commonwealth, by Tax Commissioner, *v.* Canada Mining Company. Same *v.* Petherick Mining Company. S. J. C. *Informations for not making returns.* Not yet heard.

Attorney-General, *ex rel.* Treasurer *v.* Baker Water Motor Company. Same *v.* Nantasket Steamboat Company. Same *v.* West India Importing and Manufacturing Company. Same *v.* Lawrence Worsted Mills. Same *v.* Benson Patent Manufacturing Company. S. J. C. *Informations for taxes.* Not yet heard.

Commonwealth, by information of the Treasurer *v.* Inhabitants of Cheshire. S. J. C. *Statutory proceeding for collection of a State tax.* Tax paid and information dismissed.

Attorney-General, *ex rel.* Tax Commissioner, *v.* Berkshire Paper Company. Same *v.* Cape Ann Granite Company. Same *v.* Loring Paper and Twine Company. Same *v.* Boston Chair Seating Company. S. J. C. *Informations for not making returns.* Returns made and informations dismissed.

Attorney-General, *ex rel.* Commissioner of Corporations *v.* Boston and Sandwich Boot and Shoe Company. Same *v.* Falmouth Wharf Company. S. J. C. *Informations for not making returns.* Not yet heard.

Attorney-General, *ex rel.* Treasurer *v.* Huston's Ships Berth Company. Same *v.* National Carburetta Company. Same *v.* Star Newspaper Company. Same *v.* Boston and Breckenridge Smelting Company. Same *v.* London Needle Company. Same *v.* Loring Paper and Twine Company. Same *v.* Maphattan Life Insurance Company. Same *v.* Massasoit Packing Company. Same *v.* Massachusetts Central Railroad. S. J. C. *Informations for taxes.* Taxes paid and informations dismissed.

Attorney-General *v.* Boston Marquetry Flooring Company. Same *v.* Eagle Odorless Apparatus Company of Boston and Philadelphia. Same *v.* Fairbanks Co-operative Medical Company. Same *v.* Sagamore Gas Light and Heating Company. Same *v.* Rotary Heel Manufacturing Company. Same *v.* Southfield Shoe Lace Company. S. J. C. *Informations for taxes.* Injunctions and executions issued.

Attorney-General, *ex rel.* Treasurer, *v.* Tenexine Company. S. J. C. *Information for tax.* Injunction issued. Tax collected on execution.

Commonwealth *v.* The Boston and Albany Railroad Company. S. C. *Contract.* Settled under authority of Resolve of 1881, c. 58.

Commonwealth *v.* The Boston and Albany Railroad Company.

*Bill in equity for specific performance.* S. J. C. Settled under authority of Resolve of 1881, c. 58.

James Schouler, Administrator, Petitioner for instructions. S. J. C. *Escheat.* Argued but not decided.

Charles P. Brooks, Petitioner. S. C. *Claim for work done on the State House.* Entered neither party.

Connecticut Mutual Life Insurance Company v. Daniel A. Gleason, Treasurer *et al.* S. J. C. *Petition to compel repayment of a tax.* S. J. C. Petition dismissed.

New York Life Insurance Company v. Daniel A. Gleason *et al.* S. J. C. *Petition to compel repayment of a tax.* Petition dismissed.

Society for Promoting Theological Education v. The Attorney-General. S. J. C. *Bill for instructions on the administration of a trust.* Pending.

Eugene B. Hinckley v. Susan B. Thatcher *et al.* S. J. C. *Bill in equity for construction of a will.* Pending.

Attorney-General v. Proprietors of Rowe's Wharf. *Information for an injunction.* S. J. C. Not yet heard.

Boston Society of New Jerusalem v. James Young *et al.* S. J. C. *Charitable Trust.* *Bill to obtain instructions.* Pending.

Charles H. Gould, Treasurer of Danvers Lunatic Hospital v. Inhabitants of Marlborough. S. C. *Contract.*

*In re* William J. R. Evans *et al.* S. J. C. *Petition to sell real estate.* Not yet heard.

Francis J. Stratton *et al.* v. Attorney-General. S. J. C. *Charitable Trust.*

Albert F. Bacon *et al.* v. Chandler B. Ransom *et al.* S. J. C. *Charitable Trust.* Not yet heard.

Commonwealth v. A. J. Bartholemew *et al.* S. C. *Suit against the officers of a corporation for the penalty incurred for not making returns.* Not yet tried.

Commonwealth v. Edward Mahon *et al.* S. C. *Same cause.* Not yet tried.

Commonwealth v. J. O. Wetherbee *et al.* S. C. *Same cause.* Not yet tried.

David Pulsifer v. Commonwealth. S. C. *Contract.* Judgment for defendant.

#### COUNTY OF WORCESTER.

Commonwealth v. Edward Ryan. S. J. C. *Murder.* Exceptions. S. J. C. Argued, but not yet decided.

Commonwealth v. George H. Richardson. S. J. C. *Murder.* Defendant convicted of murder in the second degree, and sentenced.

Commonwealth *v.* Joseph St. John. S. J. C. *Murder*. Defendant convicted of murder in the second degree, and sentenced.

Commonwealth *v.* Franklin E. Barnes and Sylvester A. Stockwell. S. J. C. *Conspiracy*. Exceptions S. C. Exceptions sustained.

Commonwealth *v.* Benjamin H. Franklin. S. J. C. *Obstructing a highway*. Exceptions S. C. Exceptions sustained.

Commonwealth *v.* William Kinsley. S. J. C. *Keeping an unlicensed pool table*. Exceptions S. C. Exceptions overruled.

Commonwealth, by Insurance Commissioner, *v.* The Lancaster Savings Bank. *Petition for an injunction and winding up of affairs*. Affairs in the hands of receivers.

UNITED STATES CIRCUIT COURT.

William F. Graham *v.* Boston, Hartford & Erie Railroad *et al.* Argued on demurrer. Demurrer sustained.

## CASES

*Requiring the Attorney-General's Official Supervision during the Year ending Jan. 17, 1883, though not conducted or argued by him.*

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## COUNTY OF PLYMOUTH.

Attorney-General, *ex rel.* v. County Commissioners. S. J. C. *Building bridge over Green Harbor River.* Argued, but not decided.

Attorney-General, *ex rel.* v. Charles G. Davis *et al.* S. J. C. *In re Green Harbor Marsh.* Argued, but not decided.

## COUNTY OF SUFFOLK.

*In re John J. Williams.* S. J. C. *Petition to sell real estate.* Petition dismissed.

Attorney-General, *ex rel.* v. Edward N. Perkins *et al.* v. Jamaica Pond Aqueduct Company. S. J. C. Argued on demurrer. Demurrer overruled.

Attorney-General, *ex rel.* v. William F. Hart *et al.* S. J. C. Not yet heard.

Commonwealth *ex rel.* v. Frank Morrison *et al.* S. J. C. *Information in the nature of a quo warranto.* Information dismissed.

Commonwealth *ex rel.* v. Hiram P. Harriman. S. J. C. *Information in the nature of a quo warranto to try title to an office.*

Commonwealth v. Boston & Maine Railroad. S. J. C. *Action for negligence of a common carrier.* *Nolle prosequi* entered.

Attorney-General v. City of Boston *et al.* S. J. C. *Bill in equity for an injunction against sale of Commonwealth lands by Tax Collector.* Interlocutory injunction issued.

Attorney-General *ex rel.* v. Eastern Railroad. S. J. C. *Information to enjoin the railroad against abandoning a station.* Reserved for the full court.

## COUNTY OF MIDDLESEX.

Attorney-General, *ex rel.* Mott v. Selectmen of Arlington. S. J. C. *Obstruction of a highway.* Pending.

Commonwealth v. Boston & Lowell Railroad. S. J. C. Exceptions S. C. *Indictment of common carrier for negligence.* Defendant's exceptions overruled.

COUNTY OF FRANKLIN.

Attorney-General, *ex rel.* v. William B. Washburn *et al.* S. J. C. *Bill in equity to enforce a charitable trust.* Reserved for the full court.

COUNTY OF WORCESTER.

Commonwealth v. Jesse J. Coburn. S. J. C. *Indictment of a common carrier for negligence.* Exceptions S. C. Defendant's exceptions overruled.

COUNTY OF DUKES COUNTY.

Attorney-General, *ex rel.* v. Lorenzo Smith. S. J. C. *Information in the nature of a quo warranto.* Information dismissed.

## STATEMENT

*Concerning Insane Prisoners, indicted for Murder.*

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DAVID SCANNELL, committed to the hospital in Taunton, February, 1872, is still there, and continues insane.

THOMAS BRENNAN, committed to the hospital in Taunton, escaped from that institution April 30, 1880; and all efforts to find him have been fruitless.

JOSEPH SULLIVAN, committed to the hospital at Taunton, and continues insane.

CHARLINE CLARK WILLIAMS GILMORE DANIELS, committed to the hospital at Taunton, in June, 1881, and her condition remains unchanged.

CHARLES F. FREEMAN, committed to the hospital at Danvers, in May, 1880, shows some mental improvement, but "he is not unlikely again to become insane if placed in unfavorable conditions." The superintendent does "not think the risk of relapse greater in his case, however, than in the cases of very many patients who are discharged from the hospital, and had he been placed through ordinary form of commitment, previous to any act of violence, would not hesitate to recommend his discharge."

JOHN KEMMLER, committed to the Hospital at Worcester, in February, 1880, is still there; "has been for several months very clear, and quite bright mentally, and has had no epileptic attacks" for nearly a year, so far as known.

BENJAMIN EASTMAN, committed to Worcester Hospital, Dec. 8, 1880, is "demented, frequently noisy, and very filthy in his habits."

CHARLES F. WILLIAMS, committed to the hospital at Worcester, May 24, 1881, has shown no evidence of insanity since the last report.

JAMES GATELY, acquitted by reason of insanity, and committed to Worcester Hospital, May 17, 1882, "is full of delusions."

JAMES P. MULCAHEY, committed to the Hospital at Worcester, Feb. 9, 1878, is still insane and dangerous.

## KNOW ALL MEN BY THESE PRESENTS, That

WHEREAS, by an agreement between the Boston & Albany Railroad Company and the New York & New England Railroad Company, made on the fifteenth day of July, A. D. 1880, and recorded with Suffolk Deeds, Lib. 1568, Fol. 45, to which reference may be had as if fully recited herein, said Boston & Albany Railroad Company agreed, upon and after a full performance by said New York & New England Railroad Company of each and all of its agreements thereby made, to release to it all the right, title and interest which said Boston & Albany Railroad Company had or could have, under and by virtue of any agreements theretofore made by it with the Commonwealth of Massachusetts, in or to any lands or flats in that part of Boston called South Boston, in said Commonwealth of Massachusetts, which said Commonwealth had theretofore agreed to convey to it, subject to all the terms, provisions and conditions of each and all of said agreements; and that said New York & New England Railroad Company might act as the attorney of said Boston & Albany Railroad Company, and in its name and behalf enforce, defend or settle any legal right, claim or liability of or against it under said agreements, or in regard to or in connection with said lands or flats, except as therein excepted, but only at the cost and expense of said New York & New England Railroad Company, and without increasing or creating any liability of said Boston & Albany Railroad Company;

AND WHEREAS, said Commonwealth, acting by its Board of Harbor and Land Commissioners, with the approval of its Governor and Council, and to the satisfaction of said Board, of the one part, and said New York & New England Railroad Company, and said Boston & Albany Railroad Company, acting by said New York & New England Railroad Company as its attorney under the authority and power aforesaid, of the other part, have mutually agreed



upon a full settlement, on the terms hereinafter set forth and agreed upon, of all matters, claims and demands asserted in the suit at law now pending in the Superior Court in and for the County of Suffolk, in said Commonwealth, or in the proceedings in equity now pending in the Supreme Judicial Court in and for said County of Suffolk, commenced against said Boston & Albany Railroad Company in pursuance of chapter fifty (50) of the Resolves passed by the General Court of said Commonwealth of Massachusetts in the year eighteen hundred and eighty (1880), or arising under or by virtue of all or any of the stipulations, agreements or provisions contained or made in or by said agreements between said Boston & Albany Railroad Company and said Commonwealth ;

NOW, THEN, IT IS HEREBY AGREED, on this first day of August, in the year 1882, by and between said Commonwealth, party hereto of the first part, and said New York & New England Railroad Company, and said Boston & Albany Railroad Company acting as aforesaid, party hereto of the second part, as follows, namely :

That the total sum or sums of money due or payable to said Commonwealth from said Boston & Albany Railroad Company, or from said New York & New England Railroad Company, on account of any or all of said matters, claims or demands, or under all or any of said agreements, including all principal, interest, damages and liabilities of every name and nature, is the sum of one hundred thousand dollars, and no more, with interest at the rate of five per centum per annum from the first day of May, in the year 1882.

And said New York & New England Railroad Company agrees with said Commonwealth, that said company will

(I.) Before or at the expiration of ten (10) years from and after the said first day of May, A. D. 1882, pay to said Commonwealth said sum of \$100,000, with interest from and after said first day of May at the rate of five per centum per annum, payable semi-annually on the first days of May and November in each year ; and will accept instead of, and as and for a conveyance of the land which said Commonwealth in and by said agreements agreed to convey to said



Boston & Albany Railroad Company, a conveyance in fee simple, free from all incumbrances except as hereinafter stated, of all that parcel of land situated in said South Boston, bounded and described as follows :

Beginning at the southerly corner of said parcel, at the intersection of the south-westerly side-line of Congress Street as located and laid out by the Board of Street Commissioners for the City of Boston, March 14, 1879, with the north-westerly side-line of " B " Street ; thence running north  $40^{\circ} 59' 59''$  east, along the north-westerly side-line of said " B " Street, seven hundred and ninety-one and fifty-seven one-hundredths ( $791\frac{57}{100}$ ) feet ; thence running north  $30^{\circ} 06' 28''$  east, and bounded south-easterly by other land of the Commonwealth, one thousand five hundred and twenty-three and sixteen one-hundredths ( $1,523\frac{16}{100}$ ) feet ; thence north  $61^{\circ} 01' 04''$  west, eight hundred and twenty-two and ninety-four one-hundredths ( $822\frac{94}{100}$ ) feet ; thence, on the arc of a curve of two thousand three hundred and seventy ( $2,370$ ) feet radius, to which the said last-described line is tangent at its westerly end, one hundred and sixteen and seventy-three one-hundredths ( $116\frac{73}{100}$ ) feet, more or less, to the dividing line, wherever it may be, between the land hereby agreed to be conveyed and other land known as the 25-Acre Lot, heretofore agreed to be conveyed by the said Commonwealth of Massachusetts to the said New York & New England Railroad Company, in accordance with the provisions of chapter two hundred and sixty (260) of the Acts of the General Court of Massachusetts for the year 1880. The course of a straight line which connects the ends of said last-described curved line is north  $62^{\circ} 25' 44''$  west, and its length is one hundred and sixteen and seventy-one one-hundredths ( $116\frac{71}{100}$ ) feet, more or less. Thence continuing south  $30^{\circ} 07' 50''$  west, along the said division line, and bounded north-westerly by the said 25-Acre Lot, one thousand and three hundred and seventeen and four-tenths ( $1,317\frac{4}{10}$ ) feet, more or less ; thence south  $55^{\circ} 48' 31''$  east, and bounded south-westerly by land of the Boston Wharf Company, seventy and ninety-six one-hundredths ( $70\frac{96}{100}$ ) feet, more or less, to a point which is on a south-easterly extension of the straight boundary line on the south-westerly

side of the land hereinbefore referred to as to be conveyed in accordance with the terms of chapter 260 of the Acts of the General Court of Massachusetts for the year 1880, and is distant ninety-seven and fifty-seven one-hundredths ( $97\frac{57}{100}$ ) feet from a copper bolt in a stone bound on the said boundary line, and is also distant one thousand and ninety-three (1,093) feet from the intersection of said south-westerly boundary line of said 25-Acre Lot with the harbor line on the easterly side of Fort Point Channel, as defined by chapter thirty-five (35) of the Acts of the General Court of Massachusetts for the year 1840; thence south  $30^{\circ} 01' 35''$  west, and bounded north-westerly by land of the Boston Wharf Company and by Congress Street, eight hundred and eighteen and forty-five one-hundredths ( $818\frac{45}{100}$ ) feet to a point in the south-westerly side-line of Congress Street hereinbefore referred to; thence south  $49^{\circ} 00' 01''$  east, along the south-westerly side-line of said Congress Street, and bounded south-westerly by land of the Boston Wharf Company and other land known as the 12-Acre Lot, heretofore agreed to be conveyed by the said Commonwealth of Massachusetts to the said New York & New England Railroad Company, seven hundred and thirty-one and fifty-six one-hundredths ( $731\frac{56}{100}$ ) feet to the point of beginning,—containing by estimation 1,976,654 square feet, more or less. For a more particular description, reference may be had to the accompanying plan. Intending to include in the foregoing description all the land lying between, and bounded by, the exterior north-easterly line set forth in the accompanying plan, the parcel of land known as the 25-Acre Lot described in chapter 260 of the Acts passed by the General Court of said Commonwealth in the year 1880, land of the Boston Wharf Company, the parcel of land described in said chapter as “a parcel of land and flats containing twelve acres, more or less,” “B” Street, so called, and a line running south  $30^{\circ} 06' 28''$  west, one thousand five hundred and twenty-eight and sixteen one-hundredths ( $1,528\frac{16}{100}$ ) feet from said exterior line to the point where said line intersects with the northerly line of “B” Street. All bearings or courses stated in the foregoing description, are to be referred to the meridian  $71^{\circ} 00' 54.883''$  west longitude.

Said conveyance to be subject to any rights which the City of Boston may have acquired in Eastern Avenue or Congress Street, and to any obligations of the Commonwealth, under the agreements and indenture next hereinafter mentioned, in relation thereto; and to be subject to the rights as to the laying out of Northern Avenue, or of any drains or sewers on, over or in said parcel of land hereinbefore described, and said to contain by estimation 1,976,654 square feet, more or less, which are reserved to said Commonwealth and to the City of Boston in and by agreements between said Commonwealth and said Boston & Albany Railroad Company, dated on the eighth day of December, A. D. 1869, and on the twenty-fourth day of June, A. D. 1873, or in and by an indenture of four parts between said Commonwealth of the first part, said Boston & Albany Railroad Company of the second part, the Boston Wharf Company of the third part, and said City of Boston of the fourth part, dated on said twenty-fourth day of June, 1873, except so far as the rights so reserved to said Commonwealth are modified by express provisions of this agreement; and to be subject to any obligations of said Commonwealth, under said agreements and indenture, in relation to said parcel of land or any portion thereof.

And said New York & New England Railroad Company further agrees with said Commonwealth, that said Company will

(II.) Proceed forthwith to perform with all practicable despatch all the filling and other work which said Commonwealth is now entitled to have performed by said Boston & Albany Railroad Company upon or in relation to said parcel of land, which filling and other work is agreed by the parties hereto to be the following only and no more; that is to say:

(1) Fill with solid filling, to the grade of sixteen feet above mean low water, the area on the accompanying plan within a line drawn from *a* to *b* to *c* to *d* to *e* to *g* to *h* to *i* to *j* to *k* to *l* to *m* to *n* to *a*, the place of beginning. If the filling of said area along said line, from *l* to *m* to *n*, shall not be done in such time and manner as to protect the filling of the adjoining territory by said Commonwealth, then the said New York & New England Railroad Company

shall, on demand, pay to said Commonwealth the actual cost of all material deposited by said Commonwealth on said adjoining territory, which may flow or form a slope upon said area along said line. The area bounded by and within a line beginning at point *e*, thence to *o*, thence to *p*, thence to *g*, thence to point *e*, the place of beginning, is for the present reserved for a dock: provided, that said company shall have the right, at any time within twenty-five (25) years from the date of this agreement, to fill said last-described area and build the sea-walls around said area so far as indicated on the accompanying plan, the work of filling and of building the said wall to be done in such way as shall be approved by said Board of Harbor and Land Commissioners; but if said company does not within said twenty-five (25) years exercise said right of filling said last-described area, it shall be taken to have elected to have reserved the same for a dock.

(2) Complete the wall on Pier Number four (4) as shown on the accompanying plan, in such way as shall be approved by said Board of Harbor and Land Commissioners.

And said Commonwealth on its part agrees with said New York & New England Railroad Company, that said company shall be permitted to pay all or any part of said sum of \$100,000 at any time within the period of ten years aforesaid, after ten (10) days' notice of its intention so to do, with the interest accrued on the part so paid up to the date of such payment; and that, upon the payment to said Commonwealth by said New York & New England Railroad Company, or by said Boston & Albany Railroad Company, of the whole of said \$100,000 with the interest accrued thereon, or upon the giving of such security therefor as said Commonwealth, by its officers or agents hereafter duly authorized so to do, shall accept as satisfactory, said Commissioners not declaring that they have any authority so to accept, and upon the due performance of the filling and other work which said New York & New England Railroad Company is bound to do as aforesaid, and of all acts and things, other than filling or work or payment of money, which either of said Railroad Companies is bound to do, under the aforesaid agreements and indenture as modified

by these presents, prior to the conveyance of said parcel of land by said Commonwealth, said Commonwealth, under the aforesaid agreements and indenture as modified by these presents, will convey by a good and sufficient warranty deed to said Boston & Albany Railroad Company, or to such grantee or assignee as the said Boston & Albany Railroad Company shall in writing designate or appoint, or to said New York & New England Railroad Company, upon the due execution and delivery of the release which said Boston & Albany Railroad Company, by the agreement first herein referred to, agrees, as therein stated, to give to said New York & New England Railroad Company, all said parcel of land, and all the land which as aforesaid the said foregoing description is intended to include, free from and of all incumbrances except as aforesaid.

And whereas Northern Avenue, so called, may be hereafter so laid out over said parcel of land that, by reason of the provisions of the agreements or indenture next hereinafter mentioned, said Boston & Albany Railroad Company or New York & New England Railroad Company may not be entitled to compensation therefor; and whereas the cost, at the rates hereinafter specified, of the portions of said parcel which may be so taken for said Northern Avenue, is included in said sum of \$100,000, and, in case of the laying out of said Northern Avenue without compensation for the reason aforesaid, ought not to be claimed or retained by said Commonwealth:

Now, then, the said Commonwealth doth further agree that, if and when said Northern Avenue is or shall be so laid out, whether by said Commonwealth or by the City of Boston, under the provisions of the aforesaid agreements of December 8, 1869, and June 24, 1873, or of the aforesaid indenture of June 24, 1873, over said parcel or any part thereof, provided, it is so laid out by said Commonwealth or said City of Boston in the due exercise of the rights reserved or given by said agreements or indenture, and in such manner and within such time, that said Commonwealth or City of Boston is not bound to make such compensation and does not incur any liability for land damages



for so doing, said Commonwealth will deduct from said \$100,000, or credit on said \$100,000, the amount of the cost, at the rate of fifty (50) cents per square foot, of all that portion of the land hereby agreed to be conveyed which shall be included within said Northern Avenue as so laid out, and which lies between the boundary line dividing said land from the 25-Acre Lot, so called, as said line is shown on the accompanying plan (described as S. 30° 07' 50" W. 1,317.40 feet, more or less) and a line drawn parallel to, and distant seventy and seventy-eight one-hundredths ( $70\frac{78}{100}$ ) feet south-easterly from, said boundary line, and of the cost, at the rate of twenty (20) cents per square foot, of any other portions of said land so included within said Northern Avenue, with interest at five (5) per centum per annum from and after the first day of May, 1882, on said amount, or repay the same amount and interest, if already paid to it, to that one of said companies which shall have paid the same. And said Commonwealth on its part hereby releases to said Boston & Albany Railroad Company and to said New York & New England Railroad Company, all right which it has by virtue of the aforesaid agreement of December 8, 1869, to lay out said Northern Avenue on or over said parcel of land or any part thereof, at any time after two years after the filling and other work, hereinbefore stipulated to be done, has been completed, and written notice thereof given to said Commonwealth.

And in consideration of the premises, and of the sum of \$330,000 heretofore paid by said Boston & Albany Railroad Company to said Commonwealth, said Commonwealth hereby releases and discharges said Boston & Albany Railroad Company of and from all debts, claims, demands, liabilities or obligations to or for the payment or performance of money, damages, filling or other work, or any other matters or things arising under or by virtue of said agreements made by said Boston & Albany Railroad Company with said Commonwealth, or by reason of any breach thereof, and accepts said New York & New England Railroad Company in the place of said Boston & Albany Railroad Company, with all

the rights and subject to all the liabilities which said Boston & Albany Railroad Company would have or be liable to under said agreements as modified by these presents, except that said Commonwealth agrees not to make to said New York & New England Railroad Company the conveyance aforesaid, except upon and after the full performance by it of all its agreements made in and by said first herein mentioned agreement of July 15, 1880, or upon the written request or with the written consent thereto of said Boston & Albany Railroad Company; and said Boston & Albany Railroad Company, acting as aforesaid by said New York & New England Railroad Company, doth hereby release, acquit, and discharge said Commonwealth of and from all claims and demands under said agreements for the conveyance to it, the said company, of any land situated in said South Boston, except said parcel of land and except the land which as aforesaid said foregoing description is intended to include.

And said Commonwealth and said Boston & Albany Railroad Company, acting as aforesaid by said New York & New England Railroad Company, and said New York & New England Railroad Company for itself, mutually accept these presents as a full accord and satisfaction of all claims and demands arising under any previous agreements relative to the subject-matters aforesaid.

IN TESTIMONY WHEREOF, on this first day of August, in the year 1882, the said Commonwealth of Massachusetts, acting by its Board of Harbor and Land Commissioners, hath caused its corporate seal to be hereto affixed, and these presents to be signed and delivered in its name and behalf, and the same to be approved by its Governor and Council; and the said New York & New England Railroad Company, acting for itself, and as the attorney of the said Boston & Albany Railroad Company, by James H. Wilson, its president, thereunto duly authorized by vote of its directors, a copy of which vote is hereto annexed, hath hereunto set its corporate name and seal; and the said Boston & Albany Railroad Company, by William Bliss, its president, thereunto duly authorized by vote of its directors, a copy of

which vote is hereto annexed, in token of its assent to the provisions of the foregoing agreement, hath hereunto set its corporate name and seal.

*Executed and delivered  
in presence of*













